

## **QUESTIONS AND ANSWERS ADR PROGRAM**

**1. What is the Court's Alternative Dispute Resolution" (ADR) Program?**

The Board of Judges has approved new Local Rule of Practice 16.2 that requires parties involved in civil actions (except social security cases and cases that involve prisoners) to agree upon a form of ADR as part of the litigation process.

**2. What are the ADR processes?**

The three processes available through the Court are: mediation, early neutral evaluation and arbitration.

**3. What is mediation?**

Mediation refers to a process in which an impartial neutral, selected by the parties, facilitates negotiations between the parties to help reach a mutually acceptable agreement.

**4. What is Early Neutral Evaluation (ENE)?**

A process wherein an impartial attorney, selected by the parties, with subject matter expertise, provides a non-binding evaluation of the case and is available to assist the parties in reaching agreement.

**5. What if we choose ENE and then, as a result of the evaluation, would like the evaluator to serve as a mediator?**

The parties can make arrangement directly with the evaluator to engage him/her in the additional role of mediator. To the extent this development results in the need for additional time, the parties can request limited additional time to from the Court to complete the process.

**6. Is the arbitration the same as that offered by the court in the past?**

Arbitration involves referral of the case to an impartial third party (or a panel of three) for a non-binding determination in settlement of the claim(s) following the presentation of evidence and arguments. Unlike other neutrals, arbitrators on the Court's list are paid by the Court for their services. The parties are also free to engage a separate, private arbitration company or arbitrator or consent to binding arbitration.

**7. Can we use other forms of ADR, such as summary trials?**

Yes, the ADR Policies and Procedures provide for other forms of ADR, including summary trials and special masters.

**8. How does this program help litigants?**

The concept is that this will expedite the resolution of cases and also reduce the costs of litigation for clients.

**9. Are there lawyers available to assist *pro se* litigants?**

The Court has developed a program under the auspice of Jones Day to make attorneys available to counsel *pro se* litigants using the ADR process.

**10. Who will pay for the ADR program selected?**

The cost generally will be shared among or between the parties, except for Arbitration. The court will continue to pay arbitrators. Indigent parties may ask the Court to suggest that the other side bear costs. There may also be other options such as utilizing a Magistrate Judge or a *pro bono* neutral.

**11. Can the costs of an ENE or mediation be limited by setting a cap on the number of hours the evaluator or mediator can spend on the case?**

The parties are free to regulate expense by agreement. It should be noted that current Court experience shows that often the cost of a mediation is equal to or less than the cost of taking depositions for a day.

**12. Are judges still going to try cases?**

Of course. Some cases are simply not able to be settled and those cases will proceed to trial. Hopefully this program will reduce the number of summary judgment motions and will enable judges to conduct trials more quickly.

**13. Are judges still going to be involved in settlement at case management conferences and at other times if the parties wish?**

Yes.

**14. Does the ADR process happen before, during or after discovery?**

Ideally the ADR process will happen before discovery, but after Rule 26(a)(1) disclosures. Once parties have spent substantial time and money in discovery they seem to be less amenable to settlement. There are, however, situations where some discovery must occur, such as the plaintiff's deposition, before meaningful settlement discussions can happen. These issues are to be addressed to the judge assigned to the case and limited discovery may be allowed at his or her discretion.

**15. Can the parties conduct limited discovery prior to an ADR session?**

Yes, see Question 14 above.

**16. Who is required to attend the ADR session?**

The ADR Policies and Procedures detail who is required to attend the mediation, ENE or arbitration but, generally, a person with authority to resolve the case must be available during the ADR session.

**17. Is in-house counsel an adequate representative at a mediation or ENE for a corporate or other entity?**

If the in-house counsel meets the applicable criteria that s/he has authority to settle and is knowledgeable about the facts of the case, then s/he is an adequate representative.

**18. What if one of the parties does not participate in good faith?**

The program does require good faith participation. If one side has a reasonable belief that the other party is not participating in good faith, they may address this issue either to the judge assigned to the case or to the ADR Judge, who is the judge who serves as the chair of the Court's Standing Committee on Case Management and ADR.

**19. Why is the emphasis on having ADR so early in the litigation process?**

The goal of the program is to help litigants towards an inexpensive and prompt resolution of their case whenever possible.

**20. How can I become a neutral?**

Once you have reviewed the Policies and Procedures for the ADR program found on the court's web site ([www.pawd.uscourts.gov](http://www.pawd.uscourts.gov)) and believe you are eligible to apply for any one or several of the categories (mediator, evaluator or arbitrator), there is an application form on the web site to complete.

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